

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2005-0524

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

VIRGINIA L. DRAKE, TRUSTEE
DRAKE REVOCABLE TRUST

HUMBOLDT ROAD BURN DUMP AREA 7
ASSESSORS PARCEL NUMBER 011-780-018
BUTTE COUNTY

This Administrative Civil Liability Complaint (hereafter Complaint) is issued to Virginia L. Drake, Trustee, Drake Revocable Trust (hereafter Discharger) based on findings of failure to comply with California Water Code (CWC) Section 13304 and Section 13267. This Complaint is issued pursuant to CWC Sections 13350 and 13268(a) and (b), which authorize the imposition of Administrative Civil Liability.

The Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, (Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Humboldt Road Burn Dump (HRBD) is a contiguous collection of parcels containing, in whole or in part, waste from the disposal of municipal and/or commercial operations that contains waste as defined in California Water Code (CWC) section 13050 and hazardous materials as defined in Health and Safety Code section 25260(d). Studies conducted under contract to the City of Chico of the HRBD characterized the waste, delineated the extent, and confirmed the need for further remediation on several properties. Studies show that the HRBD had waste containing lead exceeding hazardous _____ waste levels in some locations and significant other hazardous and non-hazardous waste constituents that pose a threat to human health and the environment, including waters of the state.

Assessors Parcel Number 011-780-018

2. Currently, Assessors Parcel Number (APN) 011-780-018 is 7.13 acres of essentially unimproved property near the intersection of Stilson Canyon and Humboldt Road, in Chico, California. In the past, the property was part of a larger unimproved property; specifically, APN 011-780-018 was part of APN 011-780-010, and before that was part of the 98.5-acre parcel APN 011-050-116. APN 011-780-018 is also referred to as Area 7 of the HRBD.
3. A battery recycling facility is suspected of having operated on APN 011-780-018 in the past. Historic aerial photographs taken of the suspected battery recycling facility indicate that from 1937 until 1962, small structures are visible that are consistent with that type of operation. No structures are visible in Area 7 in photographs taken in 1975.

4. On 23 March 2000, soil samples were collected from Area 7 and the analyses showed the presence of lead at concentrations ranging from 27.9 mg/Kg to 8340 mg/Kg, and pH ranging from 6.05 to 6.88 Units. These constituents constitute waste as defined in CWC section 13050. The Discharger estimates the volume of waste in Area 7 is 500 cubic yards.
5. APN 011-780-018 is currently owned by Virginia Drake, the Drake Revocable Trust, Darwin H. Simmons, Nina R. Simmons, James E. Simmons, and the Simmons Family Trust. It was formerly also owned by John D. Drake. On 21 February 2001, John D. Drake deeded his 1/2 interest in the property to himself and Virginia L. Drake as trustees of the Drake Revocable Trust created on 23 January 2001. John D. Drake died on 22 November 2001. The Discharger, through the Drake Revocable Trust established with her deceased husband, John D. Drake, owns an undivided 1/2 interest, Darwin H. Simmons and Nina R. Simmons, through the Simmons Family Trust, own an undivided 1/4 interest, and James E. Simmons owns an undivided 1/4 interest in APN 011-780-018. As described in Findings 2 through 5, the Discharger owns the property and has knowledge of the waste discharge. The City of Chico never owned the property subject to this ACL complaint.
6. On 3 March 2003, the Discharger filed civil action in Butte County Superior Court (Case #129127) against Darwin H. Simmons, Nina R. Simmons, and James E. Simmons (hereafter the Simmons) to partition APN 011-780-018 and other properties the Discharger owns with the Simmons. Court action on the case is pending.

Previous Enforcement

7. On 3 June 2003, the Regional Board Executive Officer issued Cleanup and Abatement Order No. R5-2003-0707 (the Order), pursuant to California Water Code section 13304, to the reasonably identifiable parties responsible for the waste at the HRBD. The Order defines HRBD by the following parcels and their respective owners: APN 002-180-095 and 011-030-137 (City of Chico); APN 011-030-136, 011-030-138, 011-030-139 (Thomas and Mary Fogarty Revocable Trust); APN 011-030-015 (George Scott Revocable Trust); APN 011-030-016 (Edmond and Julie Johnson); APN 002-180-089 (Donald and Yvonne Mulkey Family Trust); APN 002-180-084 (Fred and Helen Bartig Family Trust et al.; APN 002-180-086 (Marilyn Adams Revocable Trust et al.); APN 011-780-014 (Simmons Family Trust)(Area 8); APN 011-780-018 (Drake Revocable Trust et al.)(Area 7); APN 002-180-087 and 002-180-088 (Chico Development Corporation); and APN 002-180-083 (Pleasant Valley Assembly of God).
8. The Order requires the City of Chico, Thomas and Mary Fogarty Revocable Trust, George Scott Revocable Trust, Edmond and Julie Johnson, Donald and Yvonne Mulkey Family Trust, Fred and Helen Bartig Family Trust et al., Marilyn Adams Revocable Trust et al., Simmons Family Trust, Drake Revocable Trust et al., Chico Development Corporation, Pleasant Valley Assembly of God, County of Butte, and North Valley Disposal Service to investigate, cleanup the waste, and abate the effects of the waste resulting from activities at the HRBD beginning 1 June 2004. The Order does not specify a single responsible party to cleanup the fifteen parcels, but requests each individual named in the Order to submit written notification describing if they wish to maintain the City of Chico as lead responsible party and allow access to their respective properties for the purposes of investigation and cleanup or whether they intend to cleanup their own parcels.

9. On 13 February 2004, the Discharger submitted to Regional Board staff a notice of intent to submit a separate Remedial Action Plan to comply with the Order without indication of outside assistance or participation. On 15 March 2004, the Discharger submitted a status report committing to clean up the Area 7 waste. Subsequently, the Discharger notified Regional Board and City of Chico staffs of the Discharger's intent to remove the Area 7 waste by summer 2004, if possible.
10. On 8 July 2004, the Discharger and other private parties submitted a Final Remedial Action Plan (RAP) for Humboldt Road Private Properties Operational Unit which includes Area 7, APN 011-780-014 and seven other properties. The approved remedial alternative for Area 7 is excavation and off-site disposal. The RAP proposes a time schedule to submit initial engineering design plans documents by 11 June 2004. On 13 July 2004, Regional Board staff approved the RAP and requested the Discharger submit a Remedial Design and Implementation Plan (RDIP) on or before 13 August 2004. On 28 July 2004, the Discharger notified Regional Board staff that if the Discharger's discussions with the City of Chico were unsuccessful, the Discharger intended to immediately develop and submit an RDIP and initiate permitting to allow remediation work to begin in spring 2005.
11. On 10 September 2004, the Discharger notified the Simmons of her intent to manage and obtain all necessary permits to cleanup the Area 7 waste during summer 2005. The Discharger proposed to allocate clean up costs based on the percentage of property ownership described in Finding 6 and committed to keep the total overall cleanup costs to a minimum. The Simmons indicated in writing they would pay the Discharger their fair share of the cleanup costs.
12. On 10 March 2005, the Discharger submitted an incomplete Remedial Design and Implementation Plan (RDIP) containing three cleanup alternatives for the Area 7 and Area 8 waste (for Area 8, see ACLC No. R5-2005-0525). The Discharger selected Alternative 3 (truck the 8,000 cubic yards of waste to a Class 1 landfill approximately 300 miles from the site), which is the cleanup alternative with the highest estimated total cost, \$1,400,000. Both Alternative 1 and 2 involved disposal of the waste in disposal sites at the HRBD with an estimated cost of \$200,000.
13. On 11 April 2005, the Simmons parties notified the Discharger that they agreed with the plan to cleanup the waste at the lower estimated total cost of \$200,000 (either Alternative 1 or 2). The Discharger did not object to the Simmons cleaning up Area 7 waste at the Simmons' expense. However, on 15 April 2005, the Discharger submitted to Regional Board staff a notice that the Discharger will require unspecified conditions prior to the cleanup. As described in Findings 7 through 13, the Discharger had made clear to the Regional Board that the Discharger had assumed responsibility to cleanup the parcel, was authorized by the Simmons as part owners of the parcel, was in control of the cleanup activities as indicated by contact with permitting agencies, and had the financial ability, in part through an agreement with the Simmons, to cleanup the Area 7 waste.

Remediation of HRBD Properties

14. Since issuance of the Order, ownership has changed on several properties described in Finding 7. HRBD is currently identified by the following Assessor's Parcel Numbers (APN) and their respective owners: APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137 (Chico Redevelopment Agency); APN 011-030-136, 011-030-138, 011-030-139, and 011-030-016 (Thomas and Mary Fogarty Revocable Trust); APN 002-180-084 and 002-180-086 (Borge Development); APN 002-180-083 (New Urban Builders); APN 011-780-014 and 011-780-018 (Drake Revocable Trust, Simmons Family Trust, and James E. Simmons). The Thomas and Mary Fogarty Revocable Trust took responsibility to remediate the Fogarty parcels and the Borge Development parcels. The City of Chico took responsibility to remediate the Chico Redevelopment Agency parcels. The New Urban Builders took responsibility to remediate its parcel.
15. On 14 July 2004, to comply with the Order, Thomas and Mary Fogarty Revocable Trust began cleanup of two HRBD properties (APN 011-030-138 and 011-030-139). On 10 March 2004, Regional Board staff issued Thomas and Mary Fogarty Revocable Trust a Certificate of Completion, pursuant to HSC section 25260, et seq., for the hazardous materials release site on APN 011-030-139. On 31 May 2005, to comply with the Order, Thomas and Mary Fogarty Revocable Trust and Borge Development began cleanup of five HRBD properties (APN 011-030-136, 011-030-138, 011-030-016, 002-180-084, and 002-180-086). On 10 August 2005, excavation and removal of HRBD waste from APN 011-030-136, 011-030-138, 011-030-016, 002-180-084, and 002-180-086 was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
16. On 1 June 2005, to comply with the Order, Chico Redevelopment Agency began cleanup of six HRBD properties (APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137). On 12 August 2005, excavation and removal of HRBD waste from APN 002-180-087, 002-180-088, 002-180-095, 002-180-089, 011-030-015, and 011-030-137 was completed. The waste was placed in a consolidation cell, which is regulated pursuant to waste discharge requirements issued by the Regional Board.
17. On 25 July 2005, to comply with the Order, New Urban Builders began cleanup of one HRBD property (APN 002-180-083). On 2 August 2005, excavation and removal of HRBD waste from APN 002-180-083 was completed. The waste was disposed at Norcal Systems, Ostrom Road Class II Landfill, which is regulated pursuant to waste discharge requirement issued by the Regional Board.
18. Chico Redevelopment Agency, Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders excavated and removed burn dump waste from their respective properties and achieved compliance with the Order, by 12 August 2005.
19. On 17 February 2005, the Discharger denied the Chico Redevelopment Agency's request to execute an Agreement for Right of Entry to place, operate or maintain air-monitoring equipment on APN 011-780-014 and APN 011-780-018 during the Chico Redevelopment Agency's remediation of six HRBD properties because the Discharger did not want anything interfering with the summer 2005 cleanup of the two parcels.

20. The Chico Redevelopment Agency consolidation cell was not filled to design capacity with waste from the Redevelopment Agency parcels. The Chico Redevelopment Agency consolidation cell had sufficient capacity for the Area 7 waste (the cell also had capacity for Area 8 waste also owned in part by the Discharger) and the Redevelopment Agency had offered the Discharger the opportunity to place the waste from Area 7 and 8 into the cell. The Discharger, however, had failed to secure regulatory permits and agreements necessary for cleanup of the Area 7 and Area 8 waste and had indicated their intent not to choose HRBD as a disposal site. Between 1 and 3 August 2005, approximately 14,000 cubic yards of clean fill was imported and placed in the Chico Redevelopment Agency consolidation cell to reach design grade.
21. The City of Chico and Chico Redevelopment Agency do not own APN 011-780-018 and could not remediate the site without permission of the Discharger. The Discharger denied Chico Redevelopment Agency access to APN 011-780-018 and 011-780-014. To comply with the Order, the City of Chico, Chico Redevelopment Agency, Thomas and Mary Fogarty Revocable Trust, Borge Development, and New Urban Builders were not required to excavate and remove Area 7 waste from APN 011-780-018.

Discharger Violations

Failure to Obtain Regulatory Permits

22. The Cleanup and Abatement Order included Required Action 17, which requires the Discharger obtain all local and state permits and access agreements to fulfill the requirements of the Order prior to beginning the work. On 28 July 2004, the Discharger notified Regional Board staff of her intent to secure regulatory permits necessary to cleanup the Area 7 waste.
23. On 21 December 2004, the Discharger submitted an incomplete application for Authority to Construct with Butte County Air Quality Management District (BCAQMD). The Discharger did not complete the application. Subsequently, the Discharger notified BCAQMD staff to halt the project.
24. On 28 March 2005, Regional Board staff provided the Discharger a list of five regulatory permits, the required compliance date for cleanup to begin in accordance with the Discharger's construction schedule, and requested the Discharger submit copies of each complete permit application by 1 May 2005.
25. On 15 April 2005, the Regional Board Executive Officer required the Discharger, Simmons Family Trust, and James E. Simmons, submit pursuant to CWC section 13267 a technical report and time schedule, by 20 April 2005, describing each regulatory agency permit or authorization necessary for work to begin on Area 7, APN 011-780-014, the date they intend to apply for each permit or authorization, and the date they anticipated receiving the permit or authorization.
26. In response, the Discharger indicated that consultants were obtained to initiate two regulatory permits; however, the Discharger subsequently notified these consultants to halt the project. The

Discharger failed to submit the technical report by 20 April 2005 (see Finding 25) and copies of each complete permit application by 1 May 2005.

Failure to Implement Clean Up

27. The Cleanup and Abatement Order includes Required Action 7, which requires the Discharger to submit, by 1 April 2004, 100 percent design plans and specifications for implementation of the Remedial Action Plan (RAP). Following the Regional Board Executive Officer's approval of the Discharger's RAP, on 13 July 2004, Regional Board staff requested the Discharger submit design plan and specifications (RDIP) on or before 13 August 2004, for implementing the Area 7 cleanup.
28. On 28 March 2005, to complete the RDIP, Regional Board staff requested the Discharger submit a revised Confirmation Sampling Plan and Transportation Plan. The Discharger submitted the revised Confirmation Sampling Plan but failed to submit the revised Transportation Plan by 1 May 2005. Therefore, the Discharger failed to complete the RDIP.
29. The Cleanup and Abatement Order includes Required Action 3, which requires the Discharger to begin cleanup no later than 1 June 2004. The 28 March 2005 letter provided the Discharger final notice of Regional Board staff's intent to request the Regional Board Executive Officer pursue additional enforcement action if final cleanup of Area 7 waste, APN 011-780-018, is not completed by 15 August 2005. The Discharger failed to cleanup the Area 7 waste.
30. On 19 April 2005, the Regional Board Executive Officer required the Discharger, Simmons Family Trust, and James E. Simmons, submit pursuant to CWC section 13267 a technical report, by 1 May 2005, describing the selected off-site disposal alternative for the Area 7 waste and the revised transportation plan developed pursuant to the selected alternative. Since the Discharger indicated full control of the proposed cleanup project, the Simmons did not submit the technical report. The Discharger also failed to submit the technical report.

Failure to Comply with other Required Actions

31. The Cleanup and Abatement Order includes Required Action 9, which requires the Discharger to submit, on the 15th of each month, a status report to describe progress in complying with the Order, explain any problems with compliance or delays in the schedule, and provide and plan for returning the cleanup to compliance with the Order. The Discharger submitted a limited number of monthly status reports from 15 March 2004 through 15 March 2005. The Discharger has failed to submit monthly status reports since 15 April 2005.
32. The Cleanup and Abatement Order includes Required Action 11, which requires any individual seeking to clean their parcel outside of an agreement with the City of Chico to act as the overall Responsible Party, to reimburse the Regional Board for reasonable costs associated with oversight of the cleanup of that parcel. On 23 July 2005, the Discharger failed to submit payment to the State Water Resources Control Board SLIC Program (Invoice Number 42726) to reimburse Regional Board staff oversight costs for the 1 January through 31 March 2005 billing period totaling three thousand four hundred fifteen dollars and twenty-two cents (\$3,415.22).

REGULATORY CONSIDERATIONS

33. Cleanup and Abatement Order (CAO) No. R5-2003-0707 states:
“If the Dischargers violate this Order, the dischargers may be liable civilly in a monetary amount provided by the California Water Code.”
34. On 28 July 2004, in violation of CAO No. R5-2003-0707, the Discharger failed to apply for the necessary permits to remove the Area 7 waste. Although the Discharger notified Regional Board staff, James E. Simmons, and Darwin and Nina Simmons of the Discharger’s intent to secure regulatory permits necessary to cleanup the Area 7 waste on APN 011-780-018, the Discharger failed to submit complete timely applications to appropriate regulatory agencies so cleanup work could begin in accordance with the time schedule described in the RDIP.
35. On 31 May 2005, in violation of CAO No. R5-2003-0707, the Discharger failed to remove waste from Area 7, APN 011-780-018.
36. On 23 July 2005, in violation of CAO No. R5-2003-0707, the Discharger failed to submit payment to reimburse the Regional Board for reasonable costs associated with oversight of cleanup of APN 011-780-014 and 011-780-018.
37. CWC Section 13304(a) states:
“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharge where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up such waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner. Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
38. CWC Section 13304(c)(1) states:
“If the waste is cleaned up or the effect of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that government agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising

cleanup or abatement activities, or taking other remedial actions. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds."

39. CWC Section 13350 states, in part:

"(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).

(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

(B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.

(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327."

40. Since 28 July 2004, the Discharger has failed to obtain the regulatory permits necessary for cleanup of Area 7 waste from APN 011-780-018 to begin and; therefore, as of 23 September 2005, the Discharger has been in violation of the Order for 422 days. Since 15 August 2005, the Discharger has failed to remove waste from Area 7 and; therefore, as of 23 September 2005, the Discharger has been in violation of the Order for 38 days. Since 23 July 2004, the Discharger has failed to submit payment to reimburse Regional Board staff oversight costs for APN 011-780-014 and 011-780-018, and; therefore, as of 23 September 2005 the Discharger has been in violation of the Order for 60 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13350 is \$5,000 for each day and the minimum liability than can be imposed is \$100 for each day. Therefore, the maximum administrative liability is \$2,600,000 ((422 + 38 +60) days times \$5,000 per day) and the minimum liability is \$52,000 ((422 + 38 + 60) days times \$100 per day).
41. Since 15 April 2005, in violation of CAO No. R5-2003-0707, the Discharger has failed to submit status reports on the 15th of each month.
42. Since 20 April 2005, in violation of CWC section 13267 and CAO No. R5-2003-0707, the Discharger has failed to submit a regulatory permitting technical report for the Area 7 waste.

43. Since 1 May 2005, in violation of CWC section 13267 and CAO NO. R5-2003-0707, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste.
44. CWC Section 13268 states:
- “Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).*
- (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”*
45. Since 15 April 2005, the Discharger has failed to submit monthly status reports and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 188 days. Since 20 April 2005, the Discharger has failed to submit a regulatory permitting technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 531 days. Since 1 May 2005, the Discharger has failed to submit an off-site disposal alternative/revised transportation plan technical report for the Area 7 waste and; therefore, as of 23 September 2005, the Discharger has been in violation of CWC Section 13267 for 145 days. The maximum liability that can be imposed by the Regional Board under CWC Section 13268 is \$1,000 for each day. Therefore, the maximum administrative civil liability is \$863,000 ((188 + 531 + 145) days times \$1,000 per day).
46. As described in Findings 40 and 45, the maximum administrative civil liability allowed pursuant to CWC Section 13350 and 13267 is \$3,463,000 (\$2,600,000 + \$863,000). The minimum administrative liability allowed pursuant to CWC Section 13350 is \$52,000. CWC Section 13267 does not provide for a minimum liability.
47. CWC Section 13327 states:
- “In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”*
48. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

**VIRGINIA L. DRAKE, TRUSTEE, DRAKE REVOCABLE TRUST IS HEREBY GIVEN
NOTICE THAT:**

1. The Executive Officer of the Regional Board proposes that the Discharger be assessed Administrative Civil Liability in the amount of one hundred thousand dollars (\$100,000). The amount of the liability proposed is greater than the minimum allowed liability required under Section 13350 (e)(1)(B), and takes into account the factors set forth in CWC Section 13327 cited in Finding No. 47, and including consideration of the economic benefit or savings resulting from the violations.
2. A hearing shall be held on November 28 and/or 29 or 1 and/or 2 December 2005 unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full.
3. If a hearing is held, the Regional Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In lieu of a hearing, the Discharger may waive the right to a hearing. If you wish to waive the right to a hearing, sign the enclosed waiver and return it with the full amount of civil liability (in a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*), to the Regional Board's office at 415 Knollcrest Drive, Suite 100, Redding, CA 96002, **by 24 October 2005.**

THOMAS R. PINKOS, Executive Officer

23 September 2005

(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Virginia L. Drake, Trustee, Drake Revocable Trust (hereinafter “Discharger”) in connection with Administrative Civil Liability Complaint No. R5-2005-0524 (hereinafter the “Complaint”);
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint;
3. I hereby waive the Discharger’s right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of issuance of the Complaint; and.
4. I agree to remit payment for the civil liability imposed in the amount of one hundred thousand dollars (\$100,000) by check, which contains a reference to “ACL Complaint No. R5-2005-0524” and is made payable to the “*State Water Resources Control Board Cleanup and Abatement Account.*”
5. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)